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TO: Ron Bersin, Executive Director
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The Hon. Bev Clarno
Oregon Secretary of State
Oregon.sos@oregon.gov

FROM: Margaret S. Olney, Bennett Hartman LLP

DATE: June 26, 2019

RE: **Campaign Finance and Ethics** Violations by Republican State Senators
(Senators Herman Baertschiger Jr., Cliff Bentz, Brian Boquist, Fred Girod, Bill Hansell, Dallas Heard, Tim Knopp, Dennis Linthicum, Alan Olsen, Kim Thatcher and Chuck Thomsen)

I write on behalf of Andrea Kennedy-Smith to file formal complaints with both the Oregon Government Ethics Commission and the Secretary of State to request immediate and thorough investigations of campaign finance and ethics violations committed by Republican state senators Herman Baertschiger Jr., Cliff Bentz, Brian Boquist, Fred Girod, Bill Hansell, Dallas Heard, Tim Knopp, Dennis Linthicum, Alan Olsen, Kim Thatcher and Chuck Thomsen.

Kennedy-Smith is a paralegal who works for the office of Child Welfare, Department of Human Services. She lives in McMinnville and is a constituent of Sen. Brian Boquist, who recently and publicly threatened public safety officers with violence. Additionally, like all Oregonians, she has a personal vested interest in ensuring that state lawmakers follow the letter and spirit of all state ethics and campaign finance laws. Over the eight days since the walkout started, it is becoming clear that these absent senators are flagrantly ignoring these laws, as well as their oath of office. Accordingly, Kennedy-Smith submits this complaint and requests a prompt and thorough investigation by both the Ethics Commission and the Secretary of State.

As set forth below, these Republican state senators – elected officials bound to follow state law – have abandoned their posts and even tried to hide their locations. Media reports indicated that at least some have fled to Idaho. To fund their dereliction of duties, Republican senators are seeking donations from political supporters, including corporations with business before the legislature, without regard to legal restrictions. In fact, there is strong evidence in the public

realm that senators' travel and related expenses are already being paid by others or will be reimbursed through donations. That is illegal because Oregon law:

- prohibits public officials from accepting gifts with an aggregate value of over \$50 from anyone with a particular interest in the outcome of a vote.
- prohibits elected officials from using campaign or other political contributions to pay fines, except those arising from election law violations.
- prohibits using political funds to defray personal expenses, unless incurred while fulfilling official duties. ORS 260.407. The whole reason the Republican senators have fled the state is to *avoid* fulfilling their official duties. Therefore, the absent senators cannot use contributions from their own political coffers or other political committees to defray any expenses incurred as a result of their walk-out.

We will review our concerns in more detail below.

1. Factual Background

By now, the story of Oregon's eleven senators shirking their constitutional duties and oath of office to flee the state is well known. However, exactly how these elected officials are funding the costs associated with their dereliction of duties is now starting to emerge. Multiple PAC's and GoFundMe sites have been created and solicitations to political committees are being sent. The largest "GoFundMe" site has raised over \$42,000 dollars, much of it through anonymous donations. www.gofundme.com/Encourage-the-walking-senators. Initially, Carol Williams, the creator of the GoFundMe site, indicated that she would pass the money on to the senators directly. And although she stated on the GoFundMe site that she will be sending the money to a political committee set up for the senators, there is no record of that occurring.

Knute Buehler boasted on social media that he contributed \$5,000 to a fund to support the Republican senators (Stand with our Senators PAC), and the Oregon Firearms Federation has sent fundraising action alerts to their membership. Even Sen. Minority Leader Herman Baertschiger Jr. has used his personal social media accounts to fundraise to pay for the costs of walking off the job. Sample screen shots of those communications are attached. .

In short, the absent senators clearly do not anticipate paying for their decision to walk out with personal funds (even though they will be receiving their legislative pay and per diem compensation). Because the details of these elected public official's activities as well as funding sources are not publicly known, we request that your office conduct a thorough investigation. Indeed, the secrecy with which these senators are operating is ironic. If they truly believe they are engaged in "official duties," then they presumably would be transparent about their activities. Questions for each of the senators should include:

- Where they have been since they walked off the job?
- How have they traveled during that time?
- How much did transportation cost and how was it funded?
- What are their lodging costs and other expenses? How have those bills been paid?

- Have any family members traveled with them and how were their travel expenses funded?
- What financial or other support have they received or been promised by a third party? Does that party or entity have a legislative or administrative interest in the senator's work?

2. The Oregon Government Ethics and Campaign Finance Laws

There are two sets of laws that govern donations to public officials. First, the Oregon Government Ethics law prohibits elected officials from accepting gifts with an aggregate value over \$50 from any person or entity that has an “administrative or legislative interest” in official actions taken by the public official. ORS 244.025. Donations from individuals or entities with a particular interest in the outcome of legislative action, such as industries that believe they would be adversely affected by the cap and trade bill, would clearly be prohibited. To determine whether a gift is permissible – i.e., whether the donor has an administrative or legislative interest – the public official must know the identity of the source of the gift. OAR 199-005-0030. That rule provides, in part:

“* * * Public officials need to be aware of the source of any gifts they receive (or those that are received by their relatives or members of their household), regardless of amount, to make sure that they comply with the \$50 limit on gifts from a single source in a calendar year. To that end, public officials should not accept gifts in any amount without obtaining information from the person or entity offering the gift as to who is the source of the gift. It is the public officials’ personal responsibility to ensure that no single source provides gifts exceeding an aggregate value of \$50 in a calendar year, if the source has a legislative or administrative interest.”

In other words, anonymous gifts are prohibited, as are any gifts over \$50 aggregate from an entity that has a legislative interest in the outcome of any bill remaining to be voted upon before the session ends.

The second and related set of laws govern campaign contributions to candidates or political committees. Oregon currently does not cap the amount of money that can be contributed to candidates, instead relying on regulations that ensure transparency and accountability. Relevant to the current fundraising efforts, Oregon law (1) prohibits anonymous campaign contributions, ORS 260.083; *2018 Campaign Finance Manual*, p. 29; (2) prohibits the solicitation of money to support or oppose a candidate or measure without forming a political committee within three (3) days of receiving a contribution or making an expenditure, ORS 260.035; (3) prohibits the making of contributions in a false name (i.e., passing on contributions from others without identifying the original donor), ORS 260.402; and (4) requires the reporting of all contributions received during the legislative session within two business days of receipt. ORS

260.076. In addition, Oregon law prohibits elected officials from using campaign funds to pay to defray personal expenses – i.e. expenses that are not incurred in the furtherance of official duties. ORS 260.407. This makes sense. Otherwise, the campaign contributions could be used to make impermissible gifts, thus undermining state ethics laws. See ORS 244.020(7)(b)(A).

Finally, Oregon law prohibits the use of campaign funds to pay for legal services, penalties or other fines, except for certain election and campaign finance violations arising under ORS Chapter 256 to 260. ORS 260.407(1)(b), (2)(b), and (3)(b). The fine being imposed under Senate rules would not fall under this exception, contrary to some news reports and statements by supporters. The \$500 fine is based on the inherent power of the legislature to discipline members for not following senate rules or their obligations under the Oregon Constitution; they do not flow from election violations.

3. The Republican Senators are Violating Oregon Ethics and Campaign Finance Laws

As reflected in public statements and reporting, the senate Republicans are expecting to have all costs of their illegal walk-out covered by gifts and/or political contributions from supporters. They cannot do so without violating the ethics law and/or state campaign finance regulations. Moreover, we believe that those laws may have already been violated. Specific violations include:

- *Expenses already paid or pledged.* If the senator's travel has been paid for by an individual or entity – for example, through a private flight or donation of lodgings – those donations would either be considered a gift or a political contribution. If a gift, then the donor cannot have any administrative or legislative interest in legislation since the value of the “gift” is surely over \$50 – which is unlikely. If a campaign contribution, then the contribution should have been reported within two days of receipt, thus allowing the public to know who is bankrolling this political stunt. But even if properly reported, it would be impermissible for Senate Republicans to use those funds to defray personal expenses incurred to not do their job. That is, pursuant to ORS 260.407, political funds can only be used to defray expenses incurred in connection with official duties. Notwithstanding claims to the contrary, “official duties” cannot reasonably include expenses incurred to avoid official duties or to flee the state in order to evade the jurisdiction of Oregon State Police.
- *The GoFundMe donations as “gifts.”* Carol Williams' GoFundMe site appears to have originally been intended as a way to collect “donations” – i.e., gifts – to defray senators' expenses arising out of their refusal to do their job since the senators could not raise the money themselves. See, www.gofundme.com/Encourage-the-walking-senators. However, the senators cannot accept those donations without making an individual determination about whether the source of the gift has a legislative interest. That has obviously not occurred, nor can it if the donations have been given anonymously or bundled. This is not just a technical problem. A quick review of

the “GoFundMe” page shows that donations were made by entities that may have a specific interest in pending legislative votes. For example, Browning Logging donated \$2500. That company likely has a legislative interest in HB 2020 (natural resource extraction companies claim that their business will be hurt by HB 2020), which would make the gift unlawful. The Oregon Firearms Federation is also actively soliciting donations on behalf of the absent Senators.

- *The GoFundMe donations as political contributions.* After learning of the potential legal problems with calling these donations “gifts,” the “GoFundMe” creator announced that contributions would be sent to the political committee formed to support the senators. It explicitly states even to this day: “Expenses that may be paid are traveling expenses, expenses needed while out of state, or unlawful fines imposed by Kate.” See, www.gofundme.com/Encourage-the-walking-senators.

But this plan is still unlawful. First, to the extent these contributions are for a political purpose (i.e., to support a candidate or party), then a political committee needed to be established within three days of the first donation, which would have been Friday, June 21 and contributions made directly to it. ORS 260.035. This did not occur. Second, Oregon law prohibits anonymous donations and requires the committee to collect information on the donor’s occupation and address and then disclose donations from out-of-state. ORS 260.085. There is no evidence that any of that information has been collected or provided. Third, when donations are made for a specific political purpose, they must be reported as contributions from the original donor when passed on to the political committee. ORS 260.402. That is, it would be a criminal violation – making a contribution in a false name -- to bundle the donations and write a single check representing that the money came from, for example, “GoFundMe” or Carol Williams. Fourth, any contributions pledged to defray senators’ expenses – if permissible -- would need to be reported by the senator as a contribution within two days of that pledge, because the legislature is still in session. ORS 260.076. We are unaware of any such reporting. To the contrary, Sen. Baertschiger has actively solicited illegal donations via twitter to the Senate Leadership PAC, presumably to hide the contributions that he will personally benefit from. And others have followed suit at the direction of the Senate Minority leader. For example, on June 21, 2019 On June 21, 2019, the Oregon Firearms Federation sent an action alert stating:

"There are several “Go Fund Me” campaigns that have been started to contribute to the Republicans who have walked out, but the Senate Majority leader [sic] has informed us that they will probably not be allowed to accept those funds. They have asked that donations go directly to their “Leadership Fund.” Please donate as

generously as you can. They went to the wall for us. We need to have their backs."

The Secretary of State and Ethics Commission should demand that the Senate Majority leader and others immediately stop these efforts to launder donations. Again, it is a crime to make contributions in a false name, which is exactly what would be occurring when funds are solicited for a specific purpose and then passed through to individual senators without the required accountability and transparency.

- *Prohibited use of Political Contributions.* The plan to set up a political committee to "support the senators" (which would take direct contributions and also money collected from the GoFundMe site) fails because contributions to political committees cannot be used to pay fines, except those related to proceedings under ORS Chapter 246 to 260. ORS 260.407(1)(b) and (2)(b). The \$500 per day fine for being absent from the floor is being imposed by the Senate President based on the Republican senators' willful violation of Senate rules to prevent the business of the state being completed. It is not based on a violation of state election laws. This means that the senators will have to pay the fines themselves; they cannot use any political contributions for that purpose. In addition, as discussed above, contributions to political committees can only be used to defray expenses incurred in connection with official duties. Simply put, no-showing in the senate and fleeing the state are not "official duties."

4. Conclusion

Senate Republicans have flouted the democratic process and acted like bullies who have not gotten their own way. They have broken pledges they made to their colleagues and the public. Rather than address the issue through respectful dialog and legal process, they have thrown a temper tantrum to get their own way. And as with bullies, it is important that the Republican senators bear the natural consequences of their actions. Under Oregon law, they must personally pay all expenses and fines caused by their unlawful, unethical and anti-democratic conduct.

We request that the Oregon Government Ethics Commission and the Secretary of State's office conduct independent investigations into the Republican senator's activities and find that money raised through the GoFundMe site or political contributions cannot be used to defray the fines or expenses related to the senators' unlawful conduct.

June 26, 2019

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9:41 ↗
◀ Chrome
Herman Baertschiger
219 Tweets
...

Tweets

Tweets & replies

Media

Likes



Herman Baertschiger @Sen... · 11h ▾

Republican leader says Senate Democrats 'lacked the courage' to face protesters at Oregon Capitol



Republican leader says Democrats 'lacked the...
kgw.com

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Herman Baertschiger @Sen... · 11h ▾

Click here to support "Encourage the Walking Senators" organized by Carol Williams



"Encourage the Walking Senators"
gofundme.com

June 26, 2019

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Knute Buehler

@KnutBuehler

Following

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I #StandWithOurSenators and donated \$5K to the cause. The Dem supermajorities have taken advantage of power and gone too far. This #ORLeg has been a total disregard for how Oregonians will continue to afford to live, work, and raise a family here.
standwithoursenators.com/donate #orpol



Donate — www.standwithoursenators.com

standwithoursenators.com

3:31 PM - 22 Jun 2019

73 Retweets 226 Likes



73

73

226



\$43,052 of \$49,500
goal

Raised by 815 people in 6 days

Recent Donations ▾

JH	\$100	Jeff Hamel	48 mins ago
Anonymous	\$100	Anonymous	1 hour ago
DH	\$50	David Howard	2 hours ago
Anonymous	\$20	Anonymous	13 hours ago
Anonymous	\$20	Anonymous	14 hours ago
CG	\$20	Chris Greb	17 hours ago

"Encourage the Walking Senators"

UPDATE #3: 6-23-19 I am delighted to say that plans are being finalized to send the money to the PAC set up for the senators. We expect to accomplish that in the next week! **Thank you** for all the support. I know the senators appreciate it. I appreciate all of you in supporting our senators. We know they still have challenges ahead of them and hopefully this will ease their minds a bit. As soon as the funds have been transferred, I will post the receipt here. Thank you again for doing an amazing job!

UPDATE #2: I have just been informed that Kate plans to fine the Senators **\$500 per day** for every day they are out! This is outrageous.

UPDATE #1: The senators have walked.

6-19-19 Our senators are prepared to walk out in order to not allow the Super Majority to pass the dangerous Cap & Trade Bill (**HB 2020**) that will harm all Oregonians. They will need to leave the state. Please support their decision to protect your family against this **disastrous bill**. All money raised will pay for expenses for the senators. The ruling majority has prohibited them from raising funds on their own. all donations will be returned to donors if they are able to get an agreement and not walk. (PLEASE NOTE: this is the original post. The senators walked and originally we did not know about the unlawful fines that would be imposed on the senators. Thus the goal amount has been raised to cover the fines.)

Senators that will benefit from these funds are: Herman Baertschiger, Cliff Benz, Brain Boquist, Fred Girod, Bill Hansell, Dallas Heard, Tim Knopp, Dennis Linthicum, Alan Olsen, chuck Thompson, and Kim Thatcher.

Expenses that may be paid are traveling expenses, expenses needed while out of state, or unlawful fines imposed by Kate. I will be withdrawing funds into my own personal account and will then disburse to the senators through the methods that are approved by Oregon state law. I am working with a family member and another Oregon Senate employee to get the funds allocated in the appropriate and legal manner.



\$10
Patricia Thurlby
17 hours ago



\$25
Paul Butler
17 hours ago



\$25
Jon Busenkell
18 hours ago

Viewing 10 of 815 Donations

 Navigation

Chaos In The Legislature

06.21.19

As you know, the Senate Republicans have walked out to protest the outrageous behavior of the majority party. The Governor has called on the State Police to track down those who left and force them back to the floor so the Democrats can pass countless bills that will seriously hurt all Oregonians for generations to come.

Among the many threats the Democrats have made (including defunding the districts of any absent Republican) is to ram through the gun confiscation bills we thought were dead.

These are very dangerous times and some of what we are seeing is simply unprecedented.

We have been informed that in order for the Democrats to be able to maintain the power to arrest the Republicans, they have to hold floor session every day. That means they will be on the floor for Saturday and Sunday sessions even though they cannot conduct business.

Protestors are expected over the weekend to come to the Capitol to voice their opposition to the destructive ambitions of the majority party. As a gun owner, you should consider joining them. It's a rare opportunity to be able to confront the gun grabbers on a weekend. So please consider coming.

Republican Senators have left the state, but Kate Brown is working with law enforcement in other states to try to get them to assist in the arrest of the absent Republicans and all the Republicans are facing fines of **\$500.00 for every day** they are absent. They need our help.

There are several "Go Fund Me" campaigns that have been started to contribute to the Republicans who have walked out, but the Senate Majority leader has informed us that they will probably not be allowed to accept those funds. They have asked that donations go directly to their "Leadership Fund." Please donate as generously as you can. They went to the wall for us. We need to have their backs.

You can donate [here](#).

And please take a moment to send a note of support to the Senators who have taken a stand. You can reach all Republican Senators [here](#).

There is a prewritten message of support, but if you choose you can add your own text in the white box above the message that says "*Add your own message here.*" This is not required.

Thank you

< MAYDAY...

More Lunacy From The Left >



ALERTS!**DEMOCRATS DOUBLE DOWN.**

June 25, 2019

MORE LUNACY FROM THE LEFT

June 22, 2019

MAYDAY...

June 18, 2019

REPUBLICANS RETURN. IS GUN CONFISCATION DEAD?

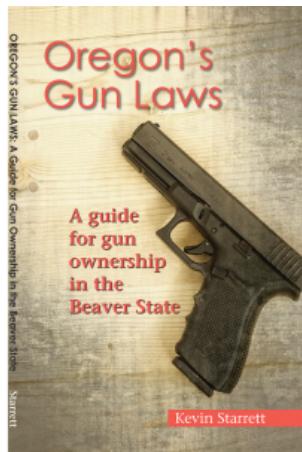
May 13, 2019

SENATOR KNOPP SELLS OUT

May 8, 2019

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